

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	Criminal No. 1:01-CR-00237
	:	
v.	:	Judge Yvette Kane
	:	
	:	(ELECTRONICALLY FILED)
KEITH SHEARER	:	

MOTION FOR EXTENSION TO
CONTINUE SENTENCING

AND NOW comes the defendant, Keith Shearer, through his attorney, Thomas A. Thornton of the Federal Public Defender's Office and files this Motion to Continue Sentencing and in support thereof, the following is averred:

1. On May 14, 2003, Keith Shearer was indicted by a Grand Jury for knowingly discharging illegal pollutants into waters of the United States without a permit in violation of 33 U.S.C. § 1311 (a), 1319 (c) (1) (A) and 18 U.S.C. § 2; intimidation or force against witnesses in violation of 18 U.S.C. § 1512 (b) (2) and

2; bank fraud in violation of 18 U.S.C. § 1344 and 2; making false statements for the purpose of obtaining loans in violation of 18 U.S.C. § 1014 and 2 and 21 other violations of federal law.

2. On June 2, 2003, Mr. Shearer appeared before Magistrate Judge J. Andrew Smyser for his initial appearance and pled not guilty to the charge.

3. By order of the same date, the Federal Public Defender's Office was appointed to represent Keith Shearer.

4. On April 13, 2004, Mr. Shearer appeared before Judge Yvette Kane and entered a plea guilty to Count 1 and Count 2 of the Information. Sentencing in this matter was deferred pending the completion of a presentence investigation.

5. The sentencing guideline range for Mr. Shearer is driven by the amount of loss to the government.

6. The Indictment was based on loans given to Mr. Shearer by the Farm Services Agency.

7. If Mr. Shearer was unable to pay off the loans, as required by the loan contract, the resulting shortfall would be the amount used to establish the loss figure for guideline purposes.

8. Since the guilty plea, Mr. Shearer has been liquidating his property in an effort to prove that he can pay off the loans as required.

9. The process of liquidation has taken longer than anticipated because Mr. Shearer, and his farm, are in bankruptcy.

10. The liquidation of assets and pledging of proceeds must be approved by the bankruptcy trustee and court.

11. As of this writing the bankruptcy court has approved payments which will cover the entire amount of the loans given to Mr. Shearer.

12. Mr. Shearer has placed over \$240,000 in escrow and the rest of the money to pay off the loans is being released by the bankruptcy court as it becomes available.

13. Counsel for the Farm Insurance Agency, Robert Jennison, Esquire is monitoring the escrow accounts and the payments.
14. It is believed that all of the necessary funds to pay the loans will be transferred through the bankruptcy court within the next 45 days.
15. If Mr. Shearer can demonstrate that he did have the assets to pay off his loans, then the loss amount for sentencing purposes will be zero. Other than the loss amount there are no issues affecting the guideline range.
16. The government concurs with the granting of this motion.

WHEREFORE, it is respectfully requested that This Honorable Court to continue sentencing for an additional thirty (30) days.

Respectfully submitted,

Date: November 16, 2004

/s/ Thomas A. Thornton
THOMAS A. THORNTON, ESQUIRE
Asst. Federal Public Defender
Attorney ID #PA44208
100 Chestnut Street, Suite 306
Harrisburg, PA 17101
Tel No: (717) 782-2237
Fax No: (717) 782-3881
E-mail: Thomas_Thornton@fd.org
Attorney for Keith Shearer

CERTIFICATE OF SERVICE

I, Thomas A. Thornton, of the Federal Public Defender's Office do hereby I certify that I served the foregoing **MOTION TO CONTINUE SENTENCING**, via Electronic Case Filing, or by placing a copy in the United States mail, first classes in Harrisburg, Pennsylvania, addressed to the following:

Martin C. Carlson, Esquire

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Keith Shearer

[REDACTED]
[REDACTED]

Date: November 18, 2004

/so Thomas A. Thornton
THOMAS A. THORNTON, ESQUIRE
Asst. Federal Public Defender
Attorney ID #PA44208
100 Chestnut Street, Suite 306
Harrisburg, PA 17101
Tel No: (717) 782-2237
Fax No: (717) 782-3881
E-mail: Thomas_Thornton@fd.org
Attorney for Keith Shearer